

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BYTEMARK, INC.,

Plaintiff,

VS.

XEROX CORP., ACS TRANSPORT  
SOLUTIONS, INC., XEROX  
TRANSPORT SOLUTIONS, INC.,  
CONDUENT INC., and  
NEW JERSEY TRANSIT CORP.,

Defendants.

Civil Action No. 1:17-cv-01803

## **DECLARATION OF DARIUSH KEYHANI**

I, Dariush Keyhani, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am over twenty-one years of age and have personal knowledge of the following facts or access to information and/or records allowing me to confirm these facts.
2. I am a member of the law firm of Keyhani LLC and represent Plaintiff Bytemark, Inc. (“Bytemark” or “Plaintiff”).
3. I submit this declaration in support of Plaintiff Bytemark, Inc.’s Objections to the January 13, 2021 Order (Dkt. #129) of the United States Magistrate Judge.
4. Bytemark has spent significant resources litigating this dispute over the course of almost one year. Bytemark spent considerable time and resources drafting both sets of its requests for production; meeting and conferring/communicating with Defendants Xerox Corp., ACS Transport Solutions, Inc., Xerox Transport Solutions, Inc., Conduent Inc., and New Jersey Transit Corp. (collectively, “Defendants”) regarding these requests; drafting the parties’ joint letter;

briefing its Motion to Compel Document Production; and responding to Defendants' motion to compel/motion for a protective order.

5. On December 28, 2020, the deadline set by the Court in its December 14, 2020 Order, Bytemark served its Motion to Compel Document Production ("Motion to Compel," Dkt. #119)—which included the notice of motion, memorandum of law, supporting exhibits, authenticating declaration, and certificate of service—on Defendants via email. The same day, Defendants served on Bytemark via email their Memorandum of Law in Support of its Motion to Compel and Motion for Protective Order and Exhibits A-F. Attached hereto as Exhibit A are true and correct copies of (1) the December 28, 2020 email sent by Bytemark serving its Motion to Compel and supporting documents on Defendants; and (2) the December 28, 2020 email sent by Defendants serving their motion and supporting documents on Bytemark.

6. Bytemark's determination that it should follow the Court's "bundling rule" in filing its Motion to Compel was based on a careful review and reasonable interpretation of (1) the Court's December 14 Order, (2) the Individual Rules of Practice of Judge Kevin Nathaniel Fox, (3) the Court's Local Rules, and (4) the Individual Rules of Practice of Judge Paul G. Gardephe. Because Bytemark's Motion to Compel is one dispute in a larger case that was assigned to Judge Gardephe, and because the Magistrate Judge's Individual Rules and the Court's December 14, 2020 Order were silent as to the procedure for filing (and did not otherwise contradict Judge Gardephe's Rule IV.C), Bytemark followed the "bundling rule" for serving and filing its motion. Any errors in filing were unintentional and based on a reasonable, good-faith interpretation of the applicable rules.

7. Bytemark had no intent to violate the Court's December 14, 2020 Order or any of the Court's rules. Counsel for Bytemark independently studied the Court's orders and rules and

acted in good faith to comply with them. Bytemark never conspired with Defendants to violate or circumvent any of the Court's orders or rules.

8. Bytemark filed a certificate of service with the Court on December 28, 2020 indicating it had served its Motion to Compel on Defendants via email, even though it was aware that it was not required to do so. Bytemark did so to provide notice to the Court, its constituents, and the public that it had served its motion on Defendants. Bytemark believed there would be no harm in filing this certificate of service.

9. On January 6, 2021, Bytemark filed its motion and reply papers on ECF—after the entire motion had been briefed—in accordance with the Court's bundling rule (Judge Gardephe's Rule IV.C).

10. Bytemark's January 14, 2021 letter to the Court was not intended to be a formal motion for reconsideration. Rather, the purpose of the letter was to apologize to the Court and to provide an explanation as to why Bytemark had not filed its Motion to Compel via ECF on December 28, 2020. Bytemark communicated to the Court through the letter in an effort not to be litigious and to conserve the parties' and the Court's time, and because it was not clear from the Court's January 13, 2021 Order that the Magistrate Judge was aware that the parties had followed the bundling rule.

Executed on: January 27, 2021

/s/ Dariush Keyhani

# EXHIBIT A

## Bytemark, Inc. v. Xerox Corp. et al: Plaintiff's Motion to Compel Document Production

From: aengel@keyhanillc.com <aengel@keyhanillc.com>

Sent: Mon, Dec 28, 2020 at 7:41 pm

To: dcawley@mckoolsmith.com, ddehoney@mckoolsmith.com, amoore@mckoolsmith.com, jpowers@mckoolsmith.com, mrabinowitz@mckoolsmith.com, dsochia@mckoolsmith.com

Cc: Darius Keyhani, Frances Stephenson

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[Plaintiff's Notice of Motion 12-28-20.pdf](#) (184.6 KB)

[Plaintiff's Memorandum of Law 12-28-20 .pdf](#) (223 KB)

[Exhibits.zip](#) (8.2 MB)

[Declaration of Anya Engel 12-28-20.pdf](#) (93.8 KB)

[Certificate of Service 12-28-20.pdf](#) (87.1 KB) — [Download all](#)

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Dear Counsel:

Attached for service please find Bytemark's Notice of Motion to Compel Document Production, Memorandum of Law in Support of Motion to Compel Document Production, Exhibits A-G, and Declaration of Anya Engel.

Best regards,

Anya Engel  
Keyhani LLC

## Bytemark v Xerox Corp., et al.: Defs' Memo of Law in Support of its Motion to Compel and Motion for PO, and supporting Exs A-F

From: Jodie L. Mow <jmow@McKoolSmith.com>

Sent: Mon, Dec 28, 2020 at 7:13 pm

To: [Darius Keyhani \(dkeyhani@keyhanillc.com\)](mailto:dkeyhani@keyhanillc.com), [aengel@keyhanillc.com](mailto:aengel@keyhanillc.com),  
[Frances Stephenson\(fstephenson@keyhanillc.com\)](mailto:fstephenson@keyhanillc.com)

Cc: Xerox\_Bytemark

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[2020 12 28 Defs' MOL ISO Mtn to Compel and Mtn for PO.pdf](#) (297.5 KB)    [Exs A-F.zip](#) (1.3 MB)

[2020 12 28 COS re Defs' MOL in Supp of Mtn to Compel and Mtn for PO\\_Exs A-F.pdf](#) (128.2 KB) — **Download all**

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Dear Counsel,

Pursuant to the Court's order (Dkt. No. 110) and the Local Rules of this Court, please find attached Defendants' Memorandum of Law in Support of its Motion to Compel and Motion for Protective Order and Exhibits A-F.

Regards,

Jodie Mow

Jodie L. Mow | Senior Paralegal | McKool Smith, P.C.  
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